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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

RICHARD DENT, et al.)	
)	
Plaintiffs,)	
)	NO. C 14-02324 WHA
vs.)	
)	
NATIONAL FOOTBALL LEAGUE,)	
)	San Francisco, California
Defendant.)	Thursday, August 21, 2014
)	11:34 a.m.

TRANSCRIPT OF PROCEEDINGS

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1 **THE COURT:** Okay. Now we go to the NFL case,
2 *Richard Dent versus NFL.*

3 **THE CLERK:** Civil 14-2324. It's *Richard Dent versus*
4 *NFL.* Counsel, can you please come forward and state your
5 appearances?

6 **MR. GRYGIEL:** Good morning, Your Honor. May it
7 please the Court. Steve Grygiel, from Silverman Thompson in
8 Baltimore, for the plaintiffs.

9 **THE COURT:** Welcome to you.

10 **MR. RUBY:** Go ahead.

11 **MR. SINCLAIR:** Bill Sinclair, on behalf of the
12 plaintiffs.

13 **THE COURT:** Okay. I'm sorry. What was your name
14 again?

15 **MR. SINCLAIR:** Sorry. William Sinclair.

16 **THE COURT:** Oh, I see. William Sinclair. Got it.
17 Okay. Thank you.

18 **MR. SILVERMAN:** Your Honor, good morning.
19 Steve Silverman, on behalf of the plaintiffs. Good morning.

20 **THE COURT:** Okay.

21 **MR. OWENS:** Good morning, Your Honor. Mel Owens.

22 **THE COURT:** Thank you.

23 **MR. OWENS:** Plaintiff.

24 **MR. BYRNE:** Good morning, Your Honor. Thomas Byrne,
25 for the plaintiffs.

1 **THE COURT:** Anybody else?

2 **MR. GRYGIEL:** And, Your Honor, lead plaintiff
3 Jeremy Newberry. With the Court's permission, he would like to
4 stay at the trial table.

5 **THE COURT:** Of course. Yeah, that's fine. Welcome.

6 **MR. NEWBERRY:** Thank you.

7 **THE COURT:** All right. And?

8 **MR. RUBY:** Good morning, Your Honor. My name is
9 Allen Ruby, from Skadden Arps. I represent the NFL. With me
10 are my partners Jack DiCanio, and Tim Miller.

11 **THE COURT:** Great. Welcome to all three of you.

12 All right. So we're here for a CMC, and a proposed class
13 action. Is not a class action yet, but it's a proposed class
14 action. And did you get my Order about no discussion of
15 settlement until after the certification?

16 **MR. GRYGIEL:** Yes, Your Honor. Indeed, we did.

17 **THE COURT:** Good. I could go into the reasons for
18 why that's important, but if you understand already, I don't
19 need to do that.

20 **MR. GRYGIEL:** Actually, Your Honor, having read a
21 number of your class-certification opinions -- in fact, as many
22 as I could find -- I understand the role of the lawyer as a
23 fiduciary for absent Class Members, which is a predicate to the
24 request I'm going to make to you, and not without some
25 trepidation.

1 **THE COURT:** Sure. Go ahead.

2 **MR. GRYGIEL:** That deals with Your Honor's proposed
3 class-certification deadline. Now as Your Honor knows,
4 particularly in light of the Supreme Court's most recent
5 rulings, for example, in *Comcast*, and in *Amgen* to a lesser
6 extent, class certification might be a little bit more
7 difficult these days than it used to be. And in this case,
8 given the nature of the case, we have a number of, for example,
9 expert issues that are necessary for class certification; not
10 the damages issues, because, as Your Honor has said, I believe
11 in the *Garvey* case, citing the *Hilao* case in the Ninth Circuit,
12 we can take care of individualized damages issues by sampling.

13 But on the common core issue of the defendant's policy
14 that's at stake here and how that affected the plaintiff class,
15 it seemed to me, Your Honor, in looking at experts, we'd have a
16 pharmacological expert, most likely. We would have someone who
17 statistically can do the methodology necessary to attributing
18 particular drugs at particular times to particular segments of
19 the class, in order to show that we can prove our liability
20 case on a classwide basis.

21 My point, Your Honor, is that I'm not sure -- in fact, I'm
22 afraid I'd be terrifically hard pressed to get that by the
23 deadline that you have here.

24 **THE COURT:** Which is January 30?

25 **MR. GRYGIEL:** That's right, Your Honor.

1 And what I was hoping --

2 THE COURT: Maybe we can deal with that. That's a
3 fair point to discuss.

4 MR. GRYGIEL: Mm-hm.

5 THE COURT: All right. So --

6 MR. GRYGIEL: At the --

7 THE COURT: -- what else do you have? What else do
8 you want to discuss?

9 MR. GRYGIEL: That was my primary point, Your Honor.
10 The other point was simply in terms of the obvious
11 compression in the schedule that Your Honor has here, compared
12 to what we had both submitted, which is generally fine with
13 me -- I'm the plaintiff. I want to get to trial -- there is a
14 pending DEA investigation. And I have some belief that some
15 witnesses --

16 THE COURT: Pending? I didn't hear. DEA?

17 MR. GRYGIEL: DEA investigation.

18 THE COURT: Drug Enforcement Agency?

19 MR. GRYGIEL: That's right, Your Honor.

20 That relates to the drug issues that the Complaint alleges.

21 That may have an impact on the willingness of a number of
22 fact witnesses to testify. As you know, most states don't have
23 statutes of limitations on felonies. And it struck me that if
24 we are going to run into some witnesses, for example --

25 THE COURT: We should wait and see if that's a

1 problem. I mean, you're panicking before we even know if it's
2 a problem.

3 Look. It turns out that we get into the case of -- and
4 large numbers of people won't testify because they're under
5 investigation, then most likely if there was a really
6 legitimate witness, we'd have to adjust the schedule; but we
7 aren't there yet.

8 **MR. GRYGIEL:** I understand, Your Honor.

9 **THE COURT:** We don't know that's going to happen yet.
10 It could. And you put me on notice. Okay? That's a fair
11 point. You put me on notice. All right?

12 What else do you want to bring up?

13 **MR. GRYGIEL:** The only other thing I wanted to do was
14 be more specific about the class-certification proposal
15 Your Honor has here. I would like, if i could, so that maybe
16 I'm not that --

17 **THE COURT:** I'm willing to give you more time on
18 that.

19 **MR. GRYGIEL:** Okay.

20 **THE COURT:** Is Mr. Ruby going to object to more time
21 on that?

22 **MR. RUBY:** (Shakes head from side to side.)

23 **THE COURT:** Okay. We'll give you more time on that.

24 **MR. GRYGIEL:** Thank you, Your Honor.

25 **THE COURT:** I'll come up with a date on that.

1 So let me hear from the other side. How do you feel about
2 this schedule?

3 **MR. RUBY:** Well, we've got a lot of work to do.

4 **THE COURT:** Yes. I understand.

5 **MR. RUBY:** And we'll do it.

6 **THE COURT:** Okay.

7 **MR. RUBY:** I had a question about paragraphs 2 and 3,
8 if this is my time to ask a question.

9 **THE COURT:** Sure. Go on. Shoot.

10 **MR. RUBY:** Is it a fair assumption that the deadline
11 for Rule 12 motions in paragraph 3 is without prejudice to
12 renewed or additional Rule 12 motions, if any, if and when they
13 amend later?

14 **THE COURT:** Correct --

15 **MR. RUBY:** All right.

16 **THE COURT:** -- but let's talk about that. Now, there
17 was a suggestion in your joint statement that there was some
18 vague thing like: The plaintiffs are considering moving to
19 amend, or just filing a --

20 So if you're going to do that anyway, you ought to do it
21 now. We shouldn't have to go through -- you don't get a free
22 bite, and find out how bad or good your allegations are, and
23 then get -- I mean, you ought to just go ahead and do it, and
24 then let them move on Rule 12 against that pleading.

25 **MR. GRYGIEL:** I agree completely, Your Honor. And we

1 will have a decision on amendment and any amended pleading to
2 this Court no later than a week from tomorrow, if there's going
3 to be one.

4 **THE COURT:** Okay. Well, that's good. And let's
5 say -- all right. So let's say you are going to have one.
6 Wouldn't September 25 still work for you? I mean, I can't
7 imagine it would be that different.

8 **MR. RUBY:** Well, if they amend on September 24th,
9 then --

10 **THE COURT:** No, no, no. They said they would do it
11 within a week.

12 You're going to actually file it within a week.

13 **MR. GRYGIEL:** My plan, Your Honor, would be to have
14 an Amended Complaint, in terms of -- I should be more
15 precise -- in terms of any new claims by next Friday, a week
16 from tomorrow.

17 And so there's no surprise here, the only other claim I'm
18 considering at this time, obviously, before I've seen anything
19 that makes me find another claim, is a possible RICO claim --
20 so that there's no surprise about what it might be.

21 In terms of additional parties right now, Your Honor, I'm
22 not aware of anybody. And the reason I put it in the joint
23 case management statement was because I was afraid maybe I'd
24 find something down the road that I should have pled, and I
25 didn't want to be at prejudice for that.

1 **THE COURT:** Oh. All right. So -- so let's say,
2 worst case, plaintiffs file a new pleading a week from today.
3 Can't you still work with September 25th?

4 **MR. RUBY:** We can. I didn't understand the schedule
5 before. Sure. We can make that work.

6 **MR. GRYGIEL:** And I should also note, Your Honor, I
7 was corrected by my co-counsel, Mr. Silverman. We have also
8 investigated a wrongful-death claim. And that's one of -- so
9 there are two potential new claims that we will either have
10 decided on by next Friday, or not.

11 **THE COURT:** All right. Okay. So let's go again to
12 Mr. Ruby. I've -- I don't know the details of your Rule 301.
13 I haven't got a clue who's right on that, but that's a
14 showstopper if you're right.

15 **MR. RUBY:** Yes.

16 **THE COURT:** So that deserves to have its own brief.
17 But the other ones, I want you to do all in one brief.

18 **MR. RUBY:** All right.

19 **THE COURT:** So you can have two sets of motions going
20 in parallel, but I did agree with plaintiff we should not have
21 seriatim Rule 12. We ought to just get the Rule 12 done, like
22 get their pleading done; get your Rule 12 done. And whatever
23 survives will survive. And then go forth into the future.

24 **MR. RUBY:** Thank you, Your Honor. And then my only
25 question about Rule 3 [sic] was -- or paragraph 3 was the real

1 music of the law: Page limits. May we have, please, for
2 the -- all of the papers we file by September 25th on Rule 12?
3 In other words, all of our Rule -- all, both, or however many
4 Rule 12 briefs there are, may we please have 46 pages for
5 those, unless they had a RICO?

6 I mean, if there's a RICO there, then I'd ask for --

7 **THE COURT:** You're saying that Rule 301 -- I'm sorry
8 -- Section 301 plus the other one will add up to 46?

9 **MR. RUBY:** No more than 46. I hope it will be less,
10 but that would be the outside limit.

11 **THE COURT:** What if they do have a RICO?

12 **MR. RUBY:** If they do have a RICO, then I'd
13 respectfully request that counsel meet and confer. And if we
14 submit something to Your Honor that meets the test of reason,
15 that we do that.

16 **THE COURT:** I'm okay with the 46 part. And I'll be
17 okay with a little more than that if you have RICO to deal
18 with.

19 **MR. RUBY:** Thank you, Your Honor. That's fine.

20 **MR. GRYGIEL:** Your Honor, just on the --

21 **THE COURT:** I don't know exactly how much, but I
22 trust you not to have unnecessary paperwork. Yes, sir.

23 **MR. GRYGIEL:** On the rule of reason, and recognizing
24 brevity is the soul of wit, I'd simply like to be able to meet
25 and confer about any necessary extension of our opposition

1 papers. I would hope not to need them, but my guess is with a
2 clever lawyer on the other side, I may need a few extra pages.

3 **THE COURT:** Well, let's see. The way it ought to
4 work out is you get the same number of pages in total. So the
5 reply plus the opening equals your total number of pages.
6 That's the only fair way to do it.

7 **MR. GRYGIEL:** Okay.

8 **THE COURT:** So if they get 46, maybe you get 60. And
9 then they get 14 on --

10 Do you see how that works?

11 **MR. GRYGIEL:** Yes, Your Honor.

12 **THE COURT:** So that ought to be the way it works.

13 And I hope you don't have -- you know, on a pleading, you
14 shouldn't have a lot of the --

15 You know, I know what the Defense likes to do. They like
16 to put in a gigantic appendix of documents, and say that
17 somehow I have to consider them. And sometimes it's right. I
18 do have to.

19 But I don't like to do that if -- and just cut -- it's like
20 summary judgment. I don't want it to be a summary-judgment
21 motion.

22 **MR. RUBY:** Understood, Your Honor.

23 **THE COURT:** Okay. Good.

24 Now, two things that the plaintiff needs to remember. The
25 *Twombly* and the *Iqbal* -- that's the law. So you have to --

1 You know, you said soul of brevity and all of that. What
2 was that phrase?

3 **MR. GRYGIEL:** Brevity is the soul of wit.

4 **THE COURT:** Yes. But when it comes to pleading,
5 that's not necessarily true. Maybe I'll get you in trouble.
6 So you should plead your best case in this new pleading, if
7 you're going to do it.

8 So can we talk a minute about the -- just what -- the way
9 this whole thing worked? You're just suing the NFL.

10 **MR. GRYGIEL:** That's right, Your Honor.

11 **THE COURT:** But let's say there's an individual
12 football team that -- I would have thought that these were
13 decisions that each individual team made, not that the NFL
14 made; but maybe I'm wrong about that. How do you think it
15 works?

16 **MR. GRYGIEL:** Well, Your Honor, I would start with
17 the following proposition. The former Commissioner of the
18 National Football League, Paul Tagliabue, in a declaration
19 filed in an Eighth Circuit antitrust case, stated that the
20 National Football League was a single economic entity with, I
21 believe, 32 co-owners -- 32 joint venturers -- showing that the
22 league, itself, is in charge. The league is the proper party
23 here. I would say that, number one.

24 Number two, in terms of creating a special duty that
25 generates claims by which the plaintiffs bring their cases, the

1 National Football League provides the structure of the league.
2 It provides a number of the rules of league. It has a
3 Commissioner who has almost unbridled power to, quote, "protect
4 the integrity of the game," both on the field and off the
5 field.

6 The NFL had knowledge of the plaintiffs' medical
7 conditions, of the risks and the exposures from pharmaceutical
8 agents, and didn't fully disclose what those were; in fact,
9 didn't disclose, at all, according to the Complaint, which we
10 believe is grounded in specific facts, to the players who were
11 at risk from that.

12 **THE COURT:** I'm sorry. The NFL did not disclose what
13 item?

14 **MR. GRYGIEL:** The risks of the untrammelled use of
15 pharmacological/pharmaceutical agents for players, that players
16 were given with no more than a, "Hey, take this."

17 **THE COURT:** Given by who, though?

18 **MR. GRYGIEL:** Pardon? Given by team doctors and team
19 trainers; but our position is that that was under the aegis of
20 the league.

21 If the league is going to say, for antitrust purposes,
22 among other things, "We are a single entity. There is no
23 window, there is no space between the individual teams in the
24 league," it's very difficult then, for purposes of a different
25 case, to come in and say, "Oh, never mind. That's all on the

1 teams."

2 In fact, Jeff Pash, who is the Vice President of the
3 National Football League -- and we have specified this in two
4 discrete paragraphs in our Complaint -- referred to the doctors
5 as, quote, "our doctors"; not the team's doctors; not the
6 team's trainers. Our doctors.

7 And, Your Honor, when he was asked about the problem -- the
8 malign drug culture that infected the NFL and injured
9 players -- Mr. Pash said, "Well, that isn't just the NFL's
10 problem. That is a larger societal problem." That's not an
11 exact quote, but it's a good paraphrase; point betraying a
12 sense that the NFL here is the correct party defendant.

13 In fact, the National Football League sponsored studies.
14 There was the Matava study, which is in our allegations in our
15 Complaint, that was to look at the problem of Toradol, which is
16 one of the large pain-masking agents used in the NFL. And it's
17 central to the Complaint's allegations. The NFL was in charge
18 and participating in that. And the NFL, then, is assuming a
19 special duty to the players. That, by its very terms,
20 generates claims for breaches of those duties.

21 I look at it, I suppose, also, Your Honor, from this
22 perspective. I've done a fair amount of securities law. And
23 in financial transactions, it can happen that one party can
24 take on a special duty, in which the respondent party reposes
25 trust and confidence in the other party. Well, if that can

1 happen about money, it can certainly happen about health. And
2 it strikes me here that the National Football League assumed
3 that special duty, both in the construct of the league, the
4 league's declarations in other cases, and its position that for
5 certain purposes, it's is single actor, as well as for what the
6 league knew that the players, lacking that specialized notice,
7 didn't know.

8 I mean at the end of day, Your Honor, the National Football
9 League is a very large economic engine. And the players are
10 both the raw materials and the products. And that, by itself,
11 betokens the special duty of care that we alleged, for example,
12 in our negligent-misrepresentation claims, were breached.

13 **THE COURT:** So let's say that one particular team
14 owner -- I'm taking it outside this case -- hypothetically,
15 let's say, discriminates on the basis of race, and doesn't hire
16 any players of a certain race. So could the players who get
17 discriminated against sue the entire league?

18 **MR. GRYGIEL:** If the league had undertaken a study to
19 determine whether or not its constituent co-owners were
20 discriminating or not discriminating, betokening a special duty
21 to the players, Your Honor, my answer would be "Yes."

22 If the league was totally out of the equation, didn't know
23 it was happening, didn't undertake a duty to prevent it from
24 happening, had no stake in the particular consequences of it
25 happening, then I believe, Your Honor, the answer might well be

1 "No," depending on the facts, but that's a very different case
2 from this case. It's a different case, where the NFL, as the
3 overarching actor, as the entity truly that governs the entire
4 process here, undertakes duties to the players. And it does
5 that in a myriad of ways, which we have, you know, pled in the
6 Complaint.

7 Going, Your Honor, just for a moment, if it interests
8 you -- maybe it doesn't -- to the *Twombly* and *Iqbal* point, it
9 happens to be a special study of mine. And we don't have time
10 today, but I think I could differentiate the 12 important ways
11 that *Twombly* and *Iqbal* diverge, and diverge very meaningfully.

12 But that said, if our Complaint alleges sufficient facts of
13 the special duty that we say the NFL undertook to the players,
14 sufficient to create the reasonable inference -- and this is
15 *Twombly*, not *Iqbal* -- that discovery will produce evidence of
16 the required elements of the claim, then we have sufficiently
17 nudged our claims from merely conceivable to plausible, and
18 therefore opening the courthouse door to discovery.

19 And the same is true, I believe, Your Honor, for the
20 special-duty claims as it is for the operative facts underneath
21 those claims; for example, what the NFL said, and when it said
22 it, and why it said it.

23 **THE COURT:** Okay. Well, that's groovy. You get
24 equal time.

25 **MR. RUBY:** Well, thank you, Your Honor.

1 **THE COURT:** What would you like to say?

2 **MR. RUBY:** Well, I'd like to say the analysis that
3 the Court encouraged left out what we think is pivotal, and a
4 showstopper; and that is the collective-bargaining environment
5 in which these relationships between players and teams, and
6 teams and the league, and doctors and the teams -- those
7 relationships have been bargained; and bargained by the Players
8 Association and the league and the clubs for more than 40
9 years. And the motions we'll be filing by late September will
10 outline that, but the fact is that these duties that the
11 plaintiffs speak to are, almost without exception, duties that
12 are the subject of collectively bargained relationships among
13 the various parties.

14 The collective-bargaining agreements, as the Court will
15 see, contain provisions for what kind of doctors the member
16 clubs will hire under what circumstances. This is in the
17 collective-bargaining agreement. Those doctors are required to
18 give certain medical advice to players in writing. Committees
19 are established under the terms of the collective-bargaining
20 agreement.

21 May I call it "the 301 motion"?

22 What the 301 motion will say is a not very controversial
23 proposition, which is that if a civil claim requires the Court
24 to interpret the terms of a collective-bargaining agreement
25 with respect to any issue -- in our case, it's an issue, for

1 the most part, of duty -- then the Court doesn't have
2 jurisdiction. The jurisdictional point doesn't turn on whether
3 the Court agrees or disagrees with the particular
4 interpretation urged by the parties. The jurisdictional point
5 turns on whether the substance of the collective-bargaining
6 agreement needs to be interpreted to reach the ultimate issues
7 in the case.

8 In fact, whether or not a particular signatory or a
9 particular party bound by the collective-bargaining agreement
10 may or may not give medical advice or provide medical services
11 to players -- this is all -- this has all been bargained.

12 **THE COURT:** Who are the parties to the
13 collective-bargaining agreement?

14 **MR. RUBY:** The member clubs, the Players Association,
15 the union, an entity called "the Management Council," which is
16 an entity of the NFL. Those are -- and they all agree -- and
17 the NFL agrees to be bound, as do all of the other --

18 **THE COURT:** But is the NFL, per se, a party to the --
19 to the agreement?

20 **MR. RUBY:** The NFL is -- I'm not trying to be more --
21 to make a speech about that. The NFL's signature, as such,
22 does not appear on the agreement. The agreement is made by the
23 Management Council, which is an arm of the NFL; and the NFL
24 agrees to be bound by it. I don't think there's --

25 **THE COURT:** What do they agree to be bound by?

1 **MR. RUBY:** They agreed to be bound by the
2 collective-bargaining agreement. And the collective-bargaining
3 agreement includes and incorporates expressly such things as
4 the NFL Constitution, which also speaks to some of the issues
5 that are raised in this case.

6 **THE COURT:** And there's an arbitration clause in
7 there?

8 **MR. RUBY:** There is, indeed. There's an arbitration
9 clause not only in the collective-bargaining agreement, but
10 every player's contract is -- it's a standard form. There are
11 certain mandatory provisions in every player's contract.

12 The form of the player's contract is an exhibit
13 collectively bargained through the collective-bargaining
14 agreement. And the individual player's contract, itself, has
15 an arbitration clause, as well. And this will be one of the
16 initial motions that we file that's not unrelated to the
17 preemption 301 issue, but also has some separate
18 characteristics.

19 So finally -- and I will try not to exceed equal time -- I
20 mean, when -- I read the Complaint. I mean, it alleges, at its
21 heart, bad medical care. And I don't make light of that.
22 That's what it alleges. And it alleges that players were
23 injured or contemplated being injured or were concerned about
24 being injured. And they were given prescription drugs. And
25 there were bad consequences.

1 That's a medical decision. I'd be surprised if even the
2 plaintiffs in this case said that the NFL had a right to say to
3 a player, "You know, you know, that prescription you got for
4 Oxycontin -- you shouldn't take that, you know, or only take it
5 once a month instead of once a week."

6 I mean, there are boundaries that have to be set in the
7 treatment and management of medical conditions. And the idea
8 that it is the NFL which sets those boundaries or is
9 responsible for managing the care of a particular player is an
10 extreme notion, but it is also very explicitly contrary to the
11 substance of the CBAs.

12 **THE COURT:** Okay. All right. To come back to the --
13 I've looked forward to all of your motions and responses.
14 I asked a few questions here today, but I have no thought on
15 what the right answer is.

16 Okay. Now I want to give you more time on the January 30.
17 So what day do you want for that?

18 **MR. GRYGIEL:** Respectfully, Your Honor, I'd like to
19 ask for two months.

20 **THE COURT:** Fine. So let's go to March 31. All
21 right? Any other date that anyone wants me to change?

22 **MR. RUBY:** No.

23 **MR. GRYGIEL:** I think we're good, Your Honor.

24 **THE COURT:** All right. So we will make that one
25 change on your -- the rule says you get 10 depositions. I know

1 you're going to need more than that, but what was your
2 proposal, or did you have one on that?

3 **MR. GRYGIEL:** Frankly, Your Honor, I hadn't totted
4 them up yet, but we will need in excess of 10. And my guess is
5 we'll probably be somewhere in the range, depending on how the
6 initial depositions go, of 20 to 25.

7 **MR. RUBY:** And we don't have a proposal, because we
8 don't know how many doctors and other practitioners treated
9 even the nine Named Plaintiffs. And I'm sure that counsel are
10 going to talk about this when we get a better idea of the
11 dimensions of the medical care, and who the medical witnesses
12 might be. And that will be, I think, the main driver of how
13 many depositions we'll need.

14 **THE COURT:** Well, let's move it to 20, then, per
15 side. If you need more, come and see me.

16 I think I will save all of my other questions until after I
17 get more deeply into the case. I think that's all I want to
18 bring up for now.

19 **MR. RUBY:** I had one other issue, if I might,
20 Your Honor.

21 **THE COURT:** Sure.

22 **MR. RUBY:** In this age of HIPAA, getting medical
23 records and getting medical information is a challenge, and
24 rightly so. And I wonder if the Court would consider
25 expediting the process of getting on with it, by encouraging

1 the Named Plaintiffs to provide HIPAA waivers to the Defense.

2 **THE COURT:** Of course, you've got to do that.

3 **MR. GRYGIEL:** Absolutely.

4 **THE COURT:** You ought to be doing that pronto. And
5 that should be done.

6 Now, I don't think you need to do it yet for absent Class
7 Members, because this is not a class action yet. If we get to
8 the point where an absent Class Member needs to be deposed, and
9 to get into that kind of information, I guess I could be talked
10 into it; but certainly for the Named Plaintiffs that's a given,
11 I think.

12 **MR. GRYGIEL:** Absolutely.

13 **THE COURT:** Yeah. All right.

14 **MR. RUBY:** Yes.

15 **THE COURT:** All right.

16 **MR. RUBY:** Thank you.

17 **MR. GRYGIEL:** Thank you, Your Honor.

18 (At 12:02 p.m. the proceedings were adjourned.)

19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

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23 August 27, 2014

24 Signature of Court Reporter/Transcriber Date
Lydia Zinn

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